

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1) MICHELLE ERNST as Personal)
Representative of the Estate)
of DAVID MICHAEL ERNST,)
deceased,)
Plaintiff,)
vs.) No. 14-CV-504-GKF-PJC
1) CREEK COUNTY PUBLIC)
FACILITIES AUTHORITY,)
2) ADVANCED CORRECTIONAL)
HEALTHCARE, INC.,)
Defendants.)

* * * * *
DEPOSITION OF GARY MCINTOSH
TAKEN ON BEHALF OF THE PLAINTIFF
AT 4026 S. ARIZONA, JOPLIN, MISSOURI
COMMENCING AT 9:29 A.M.
ON DECEMBER 4, 2015
PURSUANT TO THE STIPULATIONS OF THE PARTIES
* * * * *

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REPORTED BY: ROBERTA L. JOHNSON, CSR, RPR

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1 GARY MCINTOSH

2 after first being duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. WALSH:

7 Q. Would you state your full name, please?

8 A. Gary Edward McIntosh.

9 Q. How are you employed?

10 A. Through Advanced Correctional Healthcare.

11 Q. How long have you been working for ACH?

12 A. I believe over seven years.

13 Q. Where are you presently working?

14 A. With Advanced Correctional Healthcare and
15 I've been in an internal medicine, emergency medicine,
16 family practice, rural Kansas for, oh, 10 years.

17 Q. What is the name of the practice in Kansas?

18 A. Horton Community Hospital.

19 Q. Excuse me?

20 A. Horton. H-O-R-T-O-N. Horton Community
21 Hospital.

22 Q. And what facility are you working with ACH
23 in?

24 A. In Oklahoma?

25 Q. Anyplace.

1 the doctor coming to the jail --

2 MR. WALSH: Okay.

3 MR. MCMILLIN: -- on a regular basis.

4 Q. (BY MR. WALSH) Do you recall Mr. Ernst?

5 A. Not really. I saw him once that I recall.

6 Q. Okay. And let me show you the document that
7 I have here. I think this is -- was prepared pursuant
8 to that visit; correct?

9 A. Yes.

10 Q. And as you sit here right now, do you have
11 any independent recollection of what Mr. Ernst --

12 A. No.

13 Q. -- looked like?

14 A. No.

15 Q. In going through your education to become a
16 PA, you talked about you have these modules in the
17 training. We talked about mental health training for
18 an LPN. And as a PA, do you receive more training in
19 mental health than what a PA --

20 A. Yes.

21 Q. -- an LPN is going to?

22 A. Yes.

23 Q. How much time in the PA school is spent or
24 devoted to how to treat people with mental health
25 issues?

1 A. It's a module that would have been broken
2 down for weeks, at least, if not longer.

3 Q. Do you feel competent to diagnose individuals
4 with mental health issues?

5 A. I do.

6 Q. Okay. And is that something as a PA that you
7 would do, is diagnose people with mental health
8 issues?

9 A. Yes.

10 Q. And as a PA, are you competent to administer
11 medications necessary to treat people with depression
12 issues?

13 A. Yes.

14 Q. Are you competent to administer medications
15 for people with anxiety issues?

16 A. Yes.

17 Q. The document that I handed you and I've got
18 it Bates stamp ACH 113, this is the -- the visit --

19 A. Uh-huh.

20 Q. -- that Mr. Ernst made to you; correct?

21 A. Right.

22 Q. What was the problem that Mr. Ernst was
23 having at this time?

24 A. Bilateral ear pain.

25 Q. And what did you do for Mr. Ernst?

1 A. No, it is not. It is another -- the
2 classification it's in is seizure control or other
3 neurologics.

4 Q. Did Mr. Ernst suffer from seizures?

5 A. No, he did not.

6 Q. Okay.

7 A. Not that I'm aware of.

8 Q. Was Mr. Ernst clinically depressed?

9 A. I saw nothing to indicate he was clinically
10 depressed.

11 Q. Well, you saw him on one occasion, didn't
12 you?

13 A. That's true.

14 Q. Okay. And at that time, did you review his
15 chart before you saw him on that day? I think it was
16 December 13th of 2013.

17 A. I can't say that I reviewed his chart --
18 entire chart that day.

19 Q. Okay. Why wouldn't you have reviewed his
20 chart?

21 A. He was in for ear wax.

22 Q. But did you ask him any questions? I see
23 here that you had been on some antidepressants,
24 antianxiety medication. How have you been doing?

25 A. His affect would have been normal.

1 Q. No. I'm asking, did you -- did you ask him
2 those questions specifically?

3 A. You're asking from two years ago. I can't
4 tell you what I asked him. I know what I documented.

5 Q. Okay. And what did you document?

6 A. You got the sheet?

7 Q. I stuck it back in there.

8 A. Okay.

9 Q. Let's see if we can find it again. 113.
10 Yeah. Here it is right here.

11 A. Okay. I would have examined his ears. He
12 had wax. He was wanting his pain medication for
13 Crohn's Disease.

14 Q. He was doing what?

15 A. He was requesting Lortabs. Wants Lortabs.

16 Q. And were Lortabs prescribed for him?

17 A. No.

18 Q. What was prescribed for him?

19 A. Medical records were requested regarding the
20 colonoscopy and the diagnosis.

21 Q. Are you the one that requested the medical
22 records then?

23 A. Uh-huh.

24 Q. And these are the medical records from Creek
25 Medical Center?

1 suicidal, officers would put them in suicide watch.
2 The nurse would put them in suicide watch. The mental
3 health worker would put them in suicide watch and
4 routinely they would call one of us providers to tell
5 us that somebody was in watch.

6 Q. Who could then take them off of suicide
7 watch?

8 A. The provider.

9 Q. That would be you?

10 A. Myself or one of the other three that's on
11 call.

12 Q. Who are the other three that would be on
13 call?

14 A. I don't know. It was a revolving list. I
15 think Dr. Earls was one of the -- maybe Dr. Hutchins,
16 Dr. Rigstraw. The call list would vary depending on
17 somebody was on vacation.

18 Q. Okay. So it's your understanding that the
19 LPN could not take someone off of suicide watch?

20 A. No.

21 Q. And the mental health professional, the
22 master's in social work, could not take someone off of
23 suicide watch?

24 A. They routinely didn't.

25 Q. Okay. So they would always --

1 had a prior history of depression and anxiety;
2 correct?

3 A. Have you had a good prior history, yes.

4 Q. Well, Mr. Ernst had a prior history of those.

5 A. There is no record of him having ever seen
6 mental health that I'm aware of prior to his
7 incarceration.

8 Q. So you don't know --

9 A. He was placed on an antidepressant. Why?
10 I've reviewed his records back here. I never did see
11 anything that discussed chronic depression. Maybe you
12 have something, but I didn't see it. I know he was on
13 Mirtazapine. It looked like it was more for sleep.
14 At one time, he was on Trazodone, so they switched it
15 from Trazodone to Mirtazapine.

16 Q. Who switched it up?

17 A. Looked like a Brent Gray.

18 Q. Okay. Well, you saw that on 8-21 of 2013,
19 three days before his arrest, the medications that he
20 was on?

21 A. I guess.

22 Q. In Creek County?

23 A. Sure. Yeah, on his intake.

24 Q. And you know that when he first went to this
25 facility, they continued him on these medications once

1 they got them from the family, didn't they?

2 A. Uh-huh. They did.

3 Q. And they continued them for -- until October
4 -- or excuse me, until November of 2013, didn't they?

5 A. I believe they did.

6 Q. And then they stopped giving the Remeron,
7 didn't they?

8 A. On my order.

9 MR. MCMILLIN: Object to the form. I think
10 you got the dates wrong, Micky.

11 Q. (BY MR. WALSH) So it was on your order that
12 they stopped the Remeron?

13 A. Yes.

14 MR. MCMILLIN: Object.

15 Q. (BY MR. WALSH) Okay. Then show me the order
16 that you gave to stop Remeron. I still can't figure
17 out these -- I wrote it down once on these dates.

18 MR. MCMILLIN: It's January.

19 MR. WALSH: Okay.

20 THE WITNESS: Right here, DC per McIntosh.

21 MR. MCMILLIN: January 19th, 2014, protocol
22 medication revocation form. There's his order.

23 MR. WALSH: Discontinued what to property?

24 MR. MCMILLIN: Meds?

25 THE WITNESS: Meds to property. If the